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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 1039

LOCAL 300, UNITED INDUSTRIAL WORKERS OF AMERICA, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,

Petitioner,

vs.

MARRIOTT IN-FLITE SERVICES DIVISION OF MARRIOTT CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION.

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OPINIONS BELOW.

The opinion of the Court of Appeals (A. 3-13)[1] is reported at 417 F. 2d 563 (5th Cir. 1969). The decision and order of the National Labor Relations Board (A. 16-28) is reported at 171 NLRB No. 102.

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1. "A." refers to Petitioner's appendix; "R. A." refers to Respondent's appendix attached hereto; and "R." refers to the joint appendix in the count below, a copy of which was filed with the Petition.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

Whether the court below erred in setting aside an order of the National Labor Relations Board where one of the Board's regional directors failed to follow the uniform policy of providing foreign language ballots in a representation election where a substantial number of the eligible voters neither speak nor understand English.

STATUTES AND REGULATIONS INVOLVED.

In addition to the statutes and regulations set forth in the Petition, Section 101.19(b) of the Statements of Procedures of the National Labor Relations Board, Series 8, as amended, is also relevant. It is printed below in the Appendix.

STATEMENT.

Marriott In-Flite Services Division of Marriott Corporation (hereinafter referred to as "Employer") is engaged in airline catering on a nationwide basis. Involved in the instant case are three flight kitchens with approximately 600 employees on or near O'Hare International Airport, Chicago.

On February 9, 1966, Local 300, United Industrial Workers of America, Seafarers International Union of North America, AFL-CIO (hereinafter referred to as "Petitioner" or "Union") demanded recognition as bargaining agent (R. 105). The Union scheduled a strike to obtain Employer recognition without an election, but the Employer invoked the National Labor Relations Board election proce-

dures by filing a petition on February 11, 1966 (R. 1, 248). Thereafter, the Thirteenth Regional Office of the Board convened a consent election conference on February 21, 1966, where all election details were agreed upon. At this conference the Employer specifically requested foreign language ballots (R. A. 8-9):

> "Our attorney, Mr. Weise, advised the NLRB representative, Mr. Miller, that a sizeable portion of the electorate speak and understand Spanish only. Mr. Weise then requested that the Board provide Spanish election notices and also Spanish ballots. The Union Attorney, Mr. Friedman, joined in this request.
>
> "NLRB representative Miller replied that the notices would be in Spanish, but he questioned whether Board policy permitted foreign language ballots. The matter was concluded with an understanding between the parties, and Mr. Miller, that the ballots would be in Spanish as well as in English, if Board policy permitted a foreign language ballot, and if Board policy did not so permit, the ballots would be in English only. The Company received no further comment on this matter from the NLRB."

Thereupon, the parties executed an election stipulation known as a Stipulation for Certification Upon Consent Election which provided in pertinent part (R. A. 3):

> ". . . Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, *and the applicable procedures and policies of the Board.*" (Emphasis added.)

This election stipulation was entered into pursuant to a Board rule which provides that the Board, not its Regional Director, "makes the final determination of questions raised concerning . . . objections to the conduct of the election." National Labor Relations Board Statements of Procedure, Section 101.19(b).

Following execution of the foregoing stipulation, the Thirteenth Regional Office issued official election notices in Spanish and English, but the sample ballot on each election notice and the ballots actually used in the election were in English only (R. 25). The election was held on March 18, 1966 and 299 employees cast ballots for the Union, 203 employees cast ballots against the Union with 60 ballots challenged and still unopened (R. 8). Approximately one-third of those eligible to vote were Spanish-speaking employees who neither spoke nor understood English (R. 25).

The Employer filed Objections to Election on March 25, 1966, alleging 15 separate subjects of objectionable conduct pertaining to the conduct of the election itself and to conduct affecting the results of the election (R. 10-14). Objection No. 10 concerned the failure of the Regional Director to provide foreign language ballots.

The Regional Director of Region 13 recommended that Objection No. 10 be overruled (R. 25). On appeal, the Board in Washington upheld the Regional Director's recommendation. In addition, the Board upheld the Regional Director's recommendation overruling the Petitioner's other objections to the election and certified the Union as bargaining agent on June 16, 1967 (R. 164-167).

The Employer subsequently refused to bargain in order to obtain judicial review of the various issues which the Employer believed invalidated the election (R. 194).[2] In the ensuing unfair labor practice proceeding the Board held that the election and certification were valid and that the Employer had refused to bargain in violation of Section

2. "A refusal to bargain is a common method of challenging the Board's certification of a union since Board decisions in representation proceedings usually are not reviewable by courts of appeals." *NLRB* v. *Smith Industries, Inc.*, 403 F. 2d 889, 891 (5th Cir. 1968).

8(a)(5) of the Act (A. 16-30). The Employer then petitioned the Court of Appeals for the Fifth Circuit to set aside the Board's order. On October 7, 1969, the Court of Appeals, speaking through Judge Wisdom, issued its unanimous decision denying enforcement of the order on the ground that the Regional Director, contrary to uniform Board policy, failed to provide foreign language ballots for the approximately 200 Spanish-speaking employees who neither spoke nor understood English (A. 3-13). Circuit Judge Carswell and District Judge Roberts were the other two members of the panel.

REASONS FOR DENYING PETITION FOR WRIT.

1. The decision of the Court below was clearly correct. In denying enforcement of the Board's order, the Court of Appeals applied the well-established rule that actions of administrative and executive agencies cannot stand where the agency fails to observe the rules, procedures, and policies which it has established. *Vitarelli* v. *Seaton*, 359 U. S. 535 (1959); *Service* v. *Dulles*, 354 U. S. 363 (1957); *United States ex rel. Accardi* v. *Shaughnessy*, 347 U. S. 260 (1954); *United States* v. *Heffner*, Docket No. 13,114 (4th Cir. 1969). *Cf. NLRB* v. *Gissel Packing Co.*, 395 U. S. 575, 605 (1969); *Yellin* v. *United States*, 374 U. S. 109 (1963). Thus the Court of Appeals held that the Regional Director of the Thirteenth Region failed to observe the Board's uniform practice and policy of providing foreign language ballots in representation elections "where foreign speaking employees comprise a substantial portion of the eligible voters" (A. 5-6).

A recent decision of the Fourth Circuit Court of Appeals demonstrates the correctness of the decision of the court below. In *United States* v. *Heffner*, No. 13,114 (4th Cir., December 30, 1969), the court stated, in relevant part:

"An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and the courts will strike it down. This doctrine was announced in *United States ex rel. Accardi* v. *Shaughnessy*, 347 U. S. 260 (1954). . . .

* * * * *

"Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labelled a 'Regulation' or adopted with strict regard to the Administrative Procedure Act; the *Accardi* doctrine has a broader sweep. . . .

"These cases are consistent with the doctrine's purpose to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures. . . ."

2. The decision of the court below is not in conflict with decisions of this Court concerning the authority of the Board and its regional directors to conduct representation elections. In this regard, it is Petitioner's contention that a regional director has "the authority to conduct the election in a method consistent with his own practice" (Petition, p. 7). However, since neither the Petitioner nor the Board, raised this issue previously and since the court below did not treat this issue, it cannot now be raised for the first time in this Court. Petitioner "sought no ruling upon the question from the Board or the lower court and is therefore not entitled to have it decided here." *Helvering* v. *Tex-Penn Oil Co.*, 300 U. S. 481, 498 (1937).

But even assuming, *arguendo*, that Petitioner can properly raise this issue, it is nevertheless clear that regional directors do not have unlimited discretion in conducting representation elections. Certainly, regional directors do not have discretionary authority to violate the uniform election policies established by the Board itself. Thus, the Board has repeatedly set aside elections conducted by regional directors where elections were not conducted in

accordance with the Board's practices and policies. See, *e.g., Fibre Leather Manufacturing Corp.*, 167 NLRB No. 51, 66 LRRM 1056 (1967) (failure of regional director to provide foreign language ballots); *Yerges Van Liners, Inc.*, 162 NLRB 1259 (1967) (failure of regional director to provide all eligible voters an opportunity to vote). It is the responsibility of the Board, not its regional directors, to establish appropriate standards for the conduct of representation elections. And in establishing election standards it is the responsibility of the Board to see that they are uniformly applied. As the Board itself noted in *Stern Bros.*, 87 NLRB 16, 19 (1949), "Nor are we willing to set one standard for elections in New York City and another for the remainder of the country of which it is a part." All the court below did was to require that the Board abide by its own uniform policy of using foreign language ballots where a substantial portion of the eligible voters neither speak nor understand English.

It is clear from the stipulation in the instant case that it is the Board's procedures and policies, rather than the regional director's, that are to be followed. The stipulation expressly provided that the election would "be held in accordance with the . . . applicable procedures and policies *of the Board*" (R. A. 3). (Emphasis added.) This Court's decision in *NLRB* v. *A. J. Tower Co.*, 329 U. S. 324 (1946), upon which Petitioner places primary reliance, is completely consistent with the opinion below in that this Court gave full effect to a similar provision in a consent election agreement, stating:

> " . . . nothing in the consent election agreement constituted a waiver of the policy by the Board. On the contrary, the agreement expressly stated that the election was to be held in accordance with 'the customary procedures and policies of the Board,' which would include the policy prohibiting post-election challenges." *Id.* at 333-334.

Certainly the court below was correct in concluding that the "applicable procedures and policies of the Board" included the policy of providing foreign language ballots. To hold otherwise would ignore the unchallenged statement by the Board's Associate Executive Secretary that "the Agency does have a uniform policy" of providing foreign language ballots (R. A. 10). That this "uniform policy" is applied uniformly in practice can be seen from the fact that every regional director in the country who has faced a foreign language problem supplies foreign language ballots, save the Regional Director in the instant case and the officer-in-charge of the subregion who reports to him (R. A. 11-12).

3. Petitioner's argument on delegation of authority is misplaced (Petition, pp. 5-7). Petitioner urges that a regional director has great discretion in conducting elections because the Board has delegated him authority to conduct elections. Yet, it requires a giant step to conclude that, because of the delegation, a regional director has the authority to violate the Board's own policies and practices in conducting elections. Quite to the contrary, the regional director is acting as the agent of the Board in conducting an election and must follow the Board's own policies and practices. Furthermore, in the case at bar, the Regional Director placed his signature on the election stipulation in which he expressly agreed to hold the election "in accordance with . . . procedures and policies of the Board" (R. A. 3).

Assuming, *arguendo,* that the Board delegation of authority to conduct elections gives the Regional Director license to violate the Board's own policies, that authority would not exist in the instant case. The Board Rules and Regulations and Statements of Procedure call for two types of election stipulation, one in which the parties agree that the Regional Director may make final decisions on post-

election disputes, including objections to the election, except for arbitrary actions, and one in which the parties to the stipulation specifically provide that the "Board, rather than the Regional Director, makes the final determination of questions raised concerning . . . objections to the conduct of the election." Board Statement of Procedures, §§ 101.19(a)(5), 101.19(b). Since the stipulation involved in the case at bar is of the latter type (R. A. 3-7), any argument on delegation of authority is completely misplaced.

4. Even assuming, *arguendo*, that the Regional Director is accorded some discretion with respect to whether foreign language ballots should be utilized, he did not exercise any discretion in refusing to provide foreign language ballots in the instant case. The record in the instant case thus shows that the Thirteenth Region had a hard and fast rule against providing foreign language ballots without any consideration whatsoever of the circumstances in individual cases. The record evidence is clear that the position of the Thirteenth Region was that "all our ballots are printed in English and *we have made no exception to this rule*" (R. A. 11). (Emphasis added.) The record also shows that in Subregion 38, which is under the direction of the Regional Director for the Thirteenth Region, this same inflexible policy was followed: "... ballots are always in English" (R. A. 12).

In the face of a *per se* rule in the Thirteenth Region not to provide foreign language ballots, the contention of Petitioner that the Regional Director properly exercised his discretion in determining that the circumstances in this case did not warant the use of foreign ballots has a hollow ring. The Regional Director did *not* exercise any discretion. As the Supreme Court noted in *The Styria* v. *Morgan*, 22 S. Ct. 731, 734 (1902):

" . . . 'discretion' implies the absence of a hard-and-

> fast rule. 'The establishment of a clearly defined rule of action would be the end of discretion . . . "

Accord, Langnes v. *Green*, 282 U. S. 531, 541 (1931). "To arbitrarily establish a fixed policy to govern every case," as the Regional Director for the Thirteenth Region did, "is the antithesis of 'discretion.' " *Application of Frazzita*, 147 N. Y. S. 2d 11, 16 (Sup. Ct. 1955). As the court correctly observed,

> "Any determination calling for exercise of 'discretion' requires an actual exercise of judgment, which necessitates consideration of facts and circumstances which are necessary to make a sound, fair and just determination." *Ibid.*

Since the Regional Director for the Thirteenth Region neither considered the facts and circumstances nor exercised any judgment based thereon, it necessarily follows that the Regional Director did *not* exercise any discretion in refusing to provide foreign language ballots. See *United States ex rel. Accardi* v. *Shaughnessy, supra* at 267-268. Accordingly, the Petitioner's *post hoc* attempt to rationalize the Regional Director's departure from official Board policy on the basis that it constituted a proper exercise of discretion must fail. [3]

5. The court below did not exceed the permissible scope of judicial review of administrative action. Contrary to Petitioner's assertion, the court below did not "substitute its own procedural rules for those adopted by the Board" (Petition, p. 7). It only held that the Board must follow its own established policies. In so ruling, the court was carry-

3. The attempt by both the Regional Director and the Board to rationalize the former's refusal to provide foreign language ballots must be viewed somewhat skeptically. Some two weeks *after* the Regional Director issued his Report on Objections, the Thirteenth Region succinctly stated the real reason why Objection No. 10 was overruled: "[A]ll of our ballots are printed in English and we have made no exception to this rule" (R. A. 11).

ing out its "responsibility for assuring that the Board keep within reasonable grounds," *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474, 490 (1951). *Cf., NLRB* v. *J. H. Rutter-Rex Mfg. Co.*, 90 S. Ct. 417, 422 (1969) ("... the courts of appeals, and not this Court, are the watchdogs of the Board") (dissenting opinion of Chief Justice Burger and Justices Douglas and Harlan). Since this case is not one of those "rare instance[s] when the standard appears to have been misapprehended or grossly misapplied," there is no need for this Court to intervene. *Universal Camera Corp.* v. *NLRB, supra* at 491.

6. The failure to provide the approximately 200 Spanish-speaking employees ballots which they could read and understand constitutes prejudicial error. Petitioner, however, relying on Section 10 of the Administrative Procedure Act, 5 U. S. C. § 706, and this Court's decision in *NLRB* v. *Mattison Machine Works*, 365 U. S. 123 (1961), asserts that the decision of the court below is in conflict with the principle "that administrative action is not to be overturned merely because of non-prejudicial error" (Petition, pp. 10-11). Petitioner is precluded, however, from raising this issue since it was not urged or argued by either Petitioner or the Board in the court below. Examination of the briefs submitted below and the court's decision thus show that there was no discussion or reference to either the provision of the Administrative Procedure Act concerning non-prejudicial error or this Court's decision in *Mattison*. To allow the issue to be raised for the first time in this Court without benefit of a decision by the court below would be contrary to not only sound judicial discretion but numerous prior decisions of this Court as well. See, *e.g., Helvering* v. *Tex-Penn Oil Co., supra. Cf., CIO* v. *McAdory*, 325 U. S. 472 (1945).

Assuming, however, that the issue can be raised, it is submitted that the failure to provide the approximately 200

Spanish-speaking employees ballots which they could read and understand, contrary to uniform Board policy, constitutes prejudicial eror. As the court below noted (A. 10):

> "An election in which one-third of the electorate has no access to ballots in language it can understand necessarily falls below the minimum laboratory standards of fairness. . . . We can think of few things more fundamental to a democratic selection of labor representatives than the ability of the polity to cast an intelligent vote."

In view of the Board's uniform policy[4] and the substantial number of employees who were denied foreign language ballots, the Regional Director's error in failing to provide foreign language ballots cannot be considered as a trivial irregularity of administrative procedure of the sort in-

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4. The importance Board members place on foreign language ballots shows that the failure to provide foreign language ballots is not a trivial irregularity. As Board member Sam Zagoria stated:

> ". . . we go to great lengths to bring the election to the workers and to help them understand the ballot, even preparing ballots in foreign languages where necessary. The most recent I have seen was in Arabic." Zagoria, "How Now, National Labor Relations Board?," Remarks to Labor Section of the State Bar of Georgia, Atlanta, Georgia, December 13, 1968.

Moreover, NLRB Associate General Counsel Stephen Gordon recently observed that:

> ". . . the agency has posted election notices and has distributed voting ballots not only in the most isolated areas of this country, but has translated notices of elections and ballots into almost every language of the world, ranging from Spanish, Italian, Polish, German, Yugoslavian, Yiddish, Russian, Chinese, Japanese to Tagalog." Remarks by H. Stephen Gordon, "Union Authorization Cards and the Duty to Bargain," 33 *BNA Daily Lab. Rep.*, D-1, D-11 (1968).

See *Katzenbach* v. *Morgan*, 384 U. S. 641, 654 n. 15 (1966), wherein the Court stated that numerous "States have found ways of assuring an intelligent exercise of the franchise short of total disenfranchisement of persons not literate in English," noting, *inter alia*, that in New Mexico "ballots and instructions [are] authorized to be printed in English or Spanish."

volved in *Mattison*. In *Mattison* the mistake involved reference on the notice of election and ballots to the employer as "Mattison Machine Manufacturing Company" rather than "Mattison Machine Works," the employer's correct name. *NLRB* v. *Mattison Machine Works*, 274 F. 2d 347, 348 (7th Cir. 1960). Surely, such a trivial error is far different in substance and kind than the failure of the Regional Director to provide foreign language ballots for the 200 employees who neither spoke nor understood English.

Moreover, the court below adequately disposed of Petitioner's contention that none of the employees could have been confused because there was an allegedly simple "yes-no" choice on the ballot, stating (A. 11):

> ". . . the voter's ability to recognize 'yes' and 'no' may not put an end to his problems. As Marriott points out, he must read the question and instructions on the ballot as well, and these may be more troublesome. These are possibilities that cannot be resolved by speculation. . . ."

Nor is there any requirement that the Employer prove that there was actual misunderstanding or confusion caused by the failure to provide foreign language ballots.[5] Petitioner's contention to the contrary ignores the well-established principle that the Board does *not* delve into the subjective state of mind of the electorate to determine whether an election should be set aside. Thus, in *Fibre Leather Manufacturing Corp.*, 167 NLRB No. 51, 66 LRRM 1056 (1967), the Board set aside an election where the Regional Director failed to provide bilingual ballots even though "no employee approached either of the bilingual observers

5. The record shows that there was confusion in that numerous prospective Spanish-speaking employees left the polling area without voting (R. 16). As the court below noted, "Voters may be embarrassed about their unfamiliarity with English and . . . stay away from the polls" (A. 11).

to ask a question or request assistance." 66 LRRM at 1057. The Board's holding in *Fibre Leather* was *not* based on any actual voter misunderstanding, but rather on its belief "that the conditions under which the election was conducted were [not] such as to assure the effective and informed expression by all employees of their true desire." *Ibid.* And in *Athbro Precision Engineering Corp.*, 166 NLRB No. 116, 65 LRRM 1699 (1967), the Board set aside an election even though "the Board Agent's conduct did not affect the votes of employees . . ." See Bok, "The Regulation of Campaign Tactics in Representation Elections Under the National Labor Relations Act," 78 Harv. L. Rev. 38, 42 (1964) (". . . judges and administrators have agreed that actual interference with an election need not be shown to establish a violation of the law; it is enough that the conduct in question *tends* to have these effects").

Finally, the Board's decision in *Hollywood Ceramics Co.*, 140 NLRB 221 (1962), is instructive.[6] There the Board set an election aside because the Union, *inter alia*, failed to provide a Spanish translation for an explanatory sentence in one of its campaign bulletins. The Board reasoned that since one-third of the employees "were fluent in or could understand only Spanish" (precisely the same situation as in the case at bar), the lack of a Spanish translation in a campaign bulletin resulted in a situation where employees "were very likely to have been confused and misled." *Id.* at 226. Thus, the Board, in accord with its policy of *not* delving into the electorate's subjective state of mind, set aside the election because of probable confusion, not actual confusion. If the failure to translate campaign materials constitutes a basis or setting aside an election, *a fortiori*,

6. The Board's decision in *Hollywood Ceramics* was cited with approval in *Linn* v. *United Plant Guard Workers of America, Local 114*, 383 U. S. 53, 60 (1966).

the court below was correct in holding that the failure to provide Spanish ballots constitutes a basis for vitiating the election.

7. Certiorari should not be granted because the principle issue raised by the Petitioner is unimportant insofar as the overall administration of the Act is concerned and for all intents and purposes is moot. Within one month after the Employer brought to the Board's attention the fact that the Thirteenth Region *never* provided foreign language ballots, it fell into line and began providing foreign language ballots in representation elections (R. A. 1). If anything, this about-face establishes the arbitrariness of the Thirteenth Region's failure to follow the Board's uniform policy and "points up," as the Court of Appeals noted, "the isolated nature of the Region's former rule requiring English ballots" (A. 7).

CONCLUSION.

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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February 2, 1970.

NLRB-4135 (SP)
(12-59)

RA1

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REGIONAL DIRECTOR
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ESTADOS UNIDOS DE AMERICA
JUNTA NACIONAL DE RELACIONES DEL TRABAJO

AVISO DE ELECCION

DERECHOS DE LOS EMPLEADOS

El Artículo 8(a)(3) de la Ley Nacional de Relaciones del Trabajo dispone, en parte, que nada en la Ley impedirá a un patrono el hacer un convenio con una organización obrera para requerir como condición de empleo el hacerse miembro de la misma en o después del trigésimo día siguiente al comienzo de dicho empleo o de la fecha de efectividad de dicho convenio, de dichas fechas la que fuere posterior, (i) si dicha organización es para la fecha en que dicho convenio es efectuado la representante de negociación colectiva de los empleados en la unidad apropiada cubierta por dicho convenio; y (ii) a menos que después de haberse celebrado una elección según se dispone en el Artículo 9(e) dentro de 1 año con anterioridad a la fecha de efectividad de dicho convenio, la Junta haya certificado que por lo menos una mayoría de los empleados elegibles para votar en dicha elección ha votado para rescindir la autoridad de dicha organización obrera para efectuar dicho convenio.

El Artículo 8(f) de la Ley Nacional de Relaciones del Trabajo dispone, en parte, que no será una práctica ilícita de trabajo el que un patrono dedicado principalmente a la industria de construcción haga con una organización obrera cuyos miembros son empleados de construcción un convenio cubriendo a empleados que trabajen (o quienes, al ser empleados, trabajarán) en la industria de construcción debido a que dicho convenio requiere como condición de empleo el ser miembro de dicha organización después del séptimo día siguiente al comienzo de dicho empleo o de la fecha de efectividad del convenio, de dichas fechas la que fuere posterior.

PROPOSITO DE LA ELECCION

Una elección por papeleta secreta se llevará a cabo bajo la supervisión del Director Regional de la Junta Nacional de Relaciones del Trabajo, entre los votantes elegibles aquí descritos, para determinar si dichos empleados desean retirar la autoridad que la Unión tiene, bajo su convenio con el Patrono, para requerir que el ser miembro de la Unión sea una condición de empleo.

PAPELETA SECRETA

La elección será por medio de papeleta SECRETA. A los votantes se les permitirá votar sin intervención, restricción o coerción. No se permitirá hacer campaña electoral en o cerca del sitio de votar. Las violaciones a estas reglas deberán ser informadas inmediatamente al Director Regional o a su agente a cargo de la elección. Se llama su atención hacia la sección 12 de la Ley Nacional de Relaciones del Trabajo:

> **CUALQUIER PERSONA QUE VOLUNTARIAMENTE RESISTA, EVITE, IMPIDA O INTERVENGA CON CUALQUIER MIEMBRO DE LA JUNTA O CUALQUIERA DE SUS AGENTES O AGENCIAS EN EL DESEMPEÑO DE SUS DEBERES EN EL CUMPLIMIENTO DE ESTA LEY, SERA CASTIGA CON UNA MULTA DE NO MAS DE $5,000 O PRISON QUE NO EXCEDERA DE UN AÑO, O AMBRAS PENAS.**

Un agente de la Junta entregará una papeleta a cada uno de los votantes elegibles en el sitio de votar. El votante entonces marcará la papeleta secretamente en una caseta de votar y la doblará. Entonces el votante personalmente depositará la papeleta doblada en una urna electoral bajo la supervisión de un agente de la Junta. La mayoría de los empleados elegibles que voten determinará los resultados de la elección.

Para su información únicamente se incorpora aquí una copia de la papeleta oficial.

OBSERVADORES AUTORIZADOS

Cada una de las partes interesadas puede nombrar igual número de observadores, cuyo número ha de ser determinado por el Director Regional o su agente a cargo de la elección. Estos observadores tendrán que: (a) actuar como verificadores en el sitio de votar y al contarse las papeletas, (b) ayudar en la identificación de los votantes, (c) recusar votantes y papeletas, y (d) en cualquier otra forma ayudar al Director Regional o a su agente.

REGLAS DE ELEGIBILIDAD

Los empleados descritos bajo UNIDAD DE VOTANTES en este Aviso de Elección que no trabajaron durante el período de nómina que se ha designado por haber estado enfermos o de vacaciones o suspendidos temporalmente, y los empleados que estén en las fuerzas armadas de los Estados Unidos que acudan personalmente a la elección serán elegibles para votar. Aquellos empleados que han dejado el trabajo o que hayan sido despedidos por causa a partir del período de nómina designado y aquellos empleados que participen en una huelga quienes hayan sido despedidos por causa desde que comenzó la misma, y quienes no han sido reempleados o reinstalados antes de la fecha de la elección, y aquellos empleados que participen en una huelga económica que comenzó más de 12 meses antes de la fecha de la elección y quienes han sido reemplazados permanentemente, no serán elegibles para votar.

RECUSACION DE VOTANTES

La recusación de un votante DEBE ser hecha antes del votante depositar su papeleta en la urna electoral.

INFORMACION CONCERNIENTE A LA ELECCION

Cualquier empleado que desee obtener información adicional concerniente a los términos y condiciones bajo los cuales se llevará a cabo esta elección, o que desee plantear cualquier cuestión concerniente a la celebración de una elección, la unidad de votantes, o reglas de elegibilidad, lo podrá hacer comunicándose con el Director Regional o su agente a cargo de la elección.

RESINOID ENGINEERING CORPORATION
Skokie, Illinois

13-RC-11089
REGULACION

UNIDAD DE VOTACION

Son elegibles para el voto todos los trabajadores y empleados de mantenimiento del centro de trabajo de esta firma situado en Skokie, Illinois, que estuvieron empleados en dicho centro durante el período de nómina que terminó el 26 de energo de 1,967, con excepcion de los oficinistas que trabajan en la oficina, los profesionales, virgilantes y supervisores tal como se les define en el Acta.

TIEMPO Y LUGAR DE LA ELECCION

FECHA: 28 de Febrero de 1,967 TIEMPO: De 3.00 P.M. a 6.00-P.M.

LUGAR: Extremo Norte del edificio adyacente a la plataforma de carga.

"Los empleados serán llamados al voto por un equipo de observadores autorizados de acuerdo con un programa establecido por la firma anexo a la presente como "Exhibit A". Todos los empleados que no puedan votar junto con sus grupos respectivos podrán votar en cualquier momento durante el periodo de votacion programado."

UNITED STATES OF AMERICA
ESTADOS UNIDOS DE AMERICA
National Labor Relations Board
Junta Nacional De Relaciones Del Trabajo
OFFICIAL SECRET BALLOT
PAPELETA SECRETA OFICIAL

For Certain Employees of
Pana Ciertos Empleados De

RESINOID ENGINEERING CORPORATION

Do you wish to be represented for purposes of collective bargaining by -
c Desea usted estar representado para los fines de negociar colectivamente por -

UNITED STEELWORKERS OF AMERICA, AFL-CIO

MARK AN "X" IN THE SQUARE OF YOUR CHOICE
MARQUESE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCION

YES SI	NO NO
☐	☐

DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.
NO FIRME ESTA PAPELETA. Doblela y depositela en la urna electoral.

If you spoil this ballot return it to the Board Agent for a new one.
Si usted daha esta papeleta devuelvala al Agente de la Junta y pidale una nueva.

MUESTRA

ESTE ES EL UNICO AVISO OFICIAL DE ESTA ELECCION Y NO DEBE SER MUTILADO POR NADIE

GPO 889816

UNITED STATES OF AMERICA,

NATIONAL LABOR RELATIONS BOARD.

STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION.

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act, as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby Agree As Follows:

1. Secret Ballot.—An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board.

2. Eligible Voters.—The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls, also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements, but *excluding* any employees who have since quit or been discharged for cause and employees engaged in a strike who have been dis-

charged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than twelve (12) months prior to the date of the election and who have been permanently replaced. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. Notices of Election.—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The parties, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. Observers.—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer at the polling places during the election to assist in its conduct, to challenge the eligibilty of voters, and to verify the tally.

5. Tally of Ballots.—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

6. Post-Election and Run-Off Procedure.—All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

7. Record.—The record in this case shall be governed by the appropriate provisions of the Board's Rules and

Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

8. Commerce.—The Employer is engaged in commerce within the meaning of Section 2(6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). (*Insert 'commerce facts.*)

Marriott in-flite services division of Marriott-Hot Shoppes Inc., a Delaware corporation, is engaged in the operation of providing in-flite food service. During the preceding twelve months, it received in excess of $50,000 worth of materials directly from states other than the State of Illinois.

9. Wording on the Ballot.—Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom. (*If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect.*)

First.

Second.

Third.

10. Payroll Period for Eligibility.—February 11, 1966.

11. Date, Hours, and Place of Election.—March 18, 1966.

(1): Shoppe 392
9:00 AM to 11:30 AM
4:00 PM to 6:00 PM
8:00 PM to 9:00 PM
Procurement area near back dock

(2): Shoppe 391
7:00 AM to 8:30 AM
1:00 PM to 3:00 PM
7:00 PM to 8:00 PM
Cream Room

(3): Shoppe 395
7:00 AM to 8:30 AM
1:00 PM to 3:00 PM
7:00 PM to 8:00 PM
Dry food storage room, lower level

12. The Appropriate Collective Bargaining Unit.—All full time and regular part-time employees engaged in food, beverage, and equipment preparation, assembly, handling, receiving, storage and packing, including maintenance employees, food and equipment handlers, food and equipment helpers, dispatchers, coordinators and plant clerical employees employed at the Employer's Shoppes Nos. 392 and 395, O'Hare International Airport, Chicago, Illinois and the Employer's Shoppe No. 391 at 9864 Leland Avenue, Schiller Park, Illinois, but excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional

Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

Marriott-In-Flite Services Division of
Marriott-Hot Shoppes, Inc.

(Employer)

O'Hare Airport & Schiller Park, Ill.

(Address)

By /s/ H. H. Schaller, V. P. 2/21/66

(Name and Title) (Date)

Recommended:

/s/ James O. Miller 2/21/66

(Board Agent) (Date)

Date approved 2/24/66

/s/ William J. Cavers, Mhs.
Regional Director,
National Labor Relations Board.

Local 300, United Industrial Workers of America, Transportation Services and Allied Workers, Seafarers' International Union of North America, AFL-CIO

(Name of Organization)

Room 506, 605 W. Washington Blvd., Chicago, Illinois

(Address)

By /s/ Gregory Grana, Pres. 2-21-66

(Name and Title) (Date)

Case No. 13-RM-831

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

AFFIDAVIT.

J. Lyle Fackrell, having been duly sworn, states:

I am the Director of Employee Relations of Marriott-Hot Shoppes, Inc. I acted as a representative of the Company in the consent election conference held in the offices of the National Labor Relations Board, Region 13, Chicago, Illinois on February 21, 1966. The meeting was conducted by Mr. James A. Miller, NLRB Field Examiner. At this meeting the Company and Local 300, United Industrial Workers of America, Transportation Services and Allied Workers, Seafarers International Union of North America, AFL-CIO executed a stipulation for Certification upon Consent Election.

Present on behalf of the Union were Union Attorney, Mr. Irving M. Friedman, Katz & Friedman, Chicago, Illinois, various Union officials and some 30 or 40 employees of our Company in the voting unit. Present on behalf of the Company were our attorney, Mr. John T. Weise, Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Illinois and various management officials including myself.

Our attorney, Mr. Weise, advised the NLRB representative, Mr. Miller, that a sizeable portion of the electorate speak and understand Spanish only. Mr. Weise then requested that the Board provide Spanish election notices and also Spanish ballots. The Union Attorney, Mr. Friedman, joined in this request.

NLRB representative Miller replied that the notices would be in Spanish, but he questioned whether Board policy permitted foreign language ballots. The matter was concluded with an understanding between the parties, and Mr. Miller, that the ballots would be in Spanish as well as

English, if Board policy permitted a foreign language ballot, and if Board policy did not so permit, the ballots would be in English only. The Company received no further comment on this matter from the NLRB.

The election notices were in Spanish and English. The ballots were in English only.

The foregoing is true and correct to the best of my knowledge.

J. LYLE FACKRELL.

Subscribed and sworn to before me this 12th day of January, 1967.

ELAINE J. PENK,
Nortary Public.

RA10

NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

December 14, 1966

R. Theodore Clark, Jr., Esquire
111 West Jackson Boulevard
Chicago, Illinois 60604

Dear Mr. Clark:

Confirming my telephone conversation with you as of today, please be advised that the Agency does have a uniform policy in handling such a problem. Policy may be stated as follows:

As the director deems it necessary, election notices printed in a foreign language may be posted and in such cases, the foreign language used on the notice should also appear on the ballot. Because many of our Regions have no recourse to such a procedure, it is understandable that some of them may have advised you that their policy is contrary to that stated above. I trust that this will be helpful to you in dealing with your clients and our Regional Offices.

Sincerely yours,

HOWARD W. KLEEB,
Associate Executive Secretary.

RA11

NATIONAL LABOR RELATIONS BOARD
Thirteenth Region

881 U. S. Courthouse and Federal Office Building
219 South Dearborn Street, Chicago, Illinois 60604
Telephone 828-7572

June 16, 1966

Seyfarth, Shaw, Fairweather & Geraldson
Attn: R. Theodore Clark, Esq.
111 West Jackson Boulevard
Chicago, Illinois 60604

Re: Thomas A. Nelson, d/b/a
Trio Metal Cap Company
Case N. 13-RC-10828

Gentlemen:

In your letter of June 14, 1966 you again requested that ballots be printed in Spanish and Polish in addition to English. As Mr. Boetticher stated in his letter of March 16, 1966, all of our ballots are printed in English and we have made no exception to this rule. Separate Polish and Spanish ballots would destroy the secrecy of the ballot for these groups of employees. Since all of these employees voted or had an opportunity to study the notices in the original election, there should be no confusion in the re-run election. No employees expressed difficulty in the original election and there has been sufficient time for employees to make inquiries to the Union, Employer, or co-workers if they have difficulty understanding the ballot. Since notices have been posted in English, Spanish and Polish, I think that this is more than adequate.

Very truly yours,

RODERICK C. MACLEOD,
Field Examiner,
Telephone: 828-7634.

RA12

NATIONAL LABOR RELATIONS BOARD

Subregion 38

4th Floor, Citizen's Building, 225 Main Street
Peoria, Illinois 61602

Telephone 673-9061

December 12, 1966

R. Theodore Clark, Jr., Esq.
Seyfarth, Shaw, Fairweather & Geraldson
111 West Jackson Boulevard
Chicago, Illinois 60604

Dear Mr. Clark:

This is in reply to your letter addressed to Mr. Allen which is dated December 10, 1966. Up to now, we have not been faced with any problems in connection with running elections in plants where the voters do not speak or understand English. If we should have such a situation, we would follow the practice in the Thirteenth Region which is under the direction of Mr. Ross M. Madden, as we are under his supervision in representation matters. I have been informed that in this region the Notices of Election are translated into other languages, but the ballots are always in English.

Very truly yours,

MICHAEL J. LUCERO,
Assistant to the Officer-in-Charge.

National Labor Relations Board Statements of Procedure, Series 8, as Amended 26 F. R. 3885.

* * * * *

SEC. 101.19. *Consent adjustments before formal hearing.*

* * * * *

(b) The consent-election agreement followed by a Board determination provides that disputed matters following the agreed upon election, if determinative of the results, shall be the basis of a formal decision by the Board instead of an informal determinatioin by the regional director, except that if the regional director decides that a hearing on objections or challenged ballots is necessary he may direct such a hearing before a hearing officer, or, if the case is consolidated with an unfair labor practice proceeding, before a trial examiner. If a hearing is directed, such action on the part of the regional director constitutes a transfer of the case to the Board. Thus, except for directing a hearing, it is provided that the Board, rather than the regional director, makes the final determination of questions raised concerning eligibility, challenged votes, and objections to the conduct of the election. Thus, if challenged ballots are sufficient in number to affect the results of the count, the regional director conducts an investigation and issues a report on the challenges instead of ruling thereon unless he elects to hold a hearing. Similarly, if objections to the conduct of the election are filed within 5 days after issuance of the tally of ballots, the regional director likewise conducts an investigation and issues a report instead of ruling on the validity of the objections, unless he elects to hold a hearing. The regional director's report is served on the parties, who may file exceptions thereto within 10 days with the Board in Washington, D. C. The Board then reviews the entire record made and may, if a substantial

issue is raised, direct a hearing on the challenged ballots or the objections to the conduct of the election. Or, the Board may, if no substantial issues are raised, affirm the regional director's report and take appropriate action in termination of the proceedings. If a hearing is ordered by the regional director or the Board on the challenged ballots or objections, all parties are heard and a report containing findings of fact and recommendations as to the disposition of the challenges or objections, or both, and resolving issues of credibility is issued by the hearing officer and served on the parties, who may file exceptions thereto within 10 days with the Board in Washington, D. C. The record made on the hearing is reviewed by the Board with the assistance of its legal assistants and a final determination made thereon. If the objections are found to have merit, the election results may be voided and a new election conducted under the supervision of the regional director. If the union has been selected as the representative, the Board or the regional director, as the case may be, issues its certification, and the proceeding is terminated. If upon a decertification or employer petition the union loses the election, the Board or the regional director, as the case may be, certifies that the union is not the chosen representative.

* * * * *